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GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

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Subject : Re-publication of Central Acts & Amendment Acts in the State Gazette.

1. The Banning of Unregulated Deposit Schemes Act, 2019
(Act No.21 of 2019)

17/09/19

Rahul Roy
ALC & Under Secretary, Law,
Government of Tripura.

THE BANNING OF UNREGULATED DEPOSIT SCHEMES ACT, 2019

AN

ACT

to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Banning of Unregulated Deposit Schemes Act, 2019. Short title, extent and commencement.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall be deemed to have come into force on the 21st day of February, 2019.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*1*) "appropriate Government" means in respect of matters relating to,—

(*i*) the Union territory without legislature, the Central Government;

(*ii*) the Union territory of Puducherry, the Government of that Union territory;

(*iii*) the Union territory of Delhi, the Government of that Union territory; and

(*iv*) the State, the State Government.

(*2*) "company" shall have the same meaning as assigned to it in clause (*20*) of section 2 of the Companies Act, 2013; 18 of 2013.

(*3*) "Competent Authority" means an Authority appointed by the appropriate Government under section 7;

(*4*) "deposit" means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(*a*) amounts received as loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(*b*) amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies; 2 of 1934.

(*c*) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(*d*) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder; 42 of 1999.

(*e*) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;

(*f*) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;

(*g*) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);

(*h*) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 54 of 2002.

(*i*) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of the People Act, 1951; 43 of 1951.

(*j*) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government;

(*k*) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(*l*) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

(*i*) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

(*ii*) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;

(*iii*) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or

(*iv*) an advance under the long-term projects for supply of capital goods except those specified in item (ii):

Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund:

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

Explanation.—For the purposes of this clause,—

(*i*) in respect of a company, the expression "deposit" shall have the same meaning as assigned to it under the Companies Act, 2013; 18 of 2013.

(*ii*) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934, the expression "deposit" shall have the same meaning as assigned to it in clause (*bb*) of section 45-I of the said Act; 2 of 1934.

(*iii*) the expressions "partner" and "firm" shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932; 9 of 1932

(*iv*) the expression "partner" in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (*q*) of sub-section (*1*) of section 2 of the Limited Liability Partnership Act, 2008; 6 of 2009.

(*v*) the expression "relative" shall have the same meaning as assigned to it in the Companies Act, 2013; 18 of 2013.

(*5*) "depositor" means any person who makes a deposit under this Act;

(*6*) "deposit taker" means—

(*i*) any individual or group of individuals;

(*ii*) a proprietorship concern;

(*iii*) a partnership firm (whether registered or not);

(*iv*) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; 6 of 2009.

(*v*) a company;

(*vi*) an association of persons;

(*vii*) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not); 2 of 1882.

(*viii*) a co-operative society or a multi-State co-operative society; or

(*ix*) any other arrangement of whatsoever nature, receiving or soliciting deposits, but does not include—

(*i*) a Corporation incorporated under an Act of Parliament or a State Legislature;

(*ii*) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act,1949; 10 of 1949.

(*7*) "Designated Court" means a Designated Court constituted by the appropriate Government under section 8;

(*8*) "insurer" shall have the same meaning as assigned to it in clause (*9*) of section 2 of the Insurance Act, 1938; 4 of 1938.

(*9*) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(*10*) "person" includes—

(*i*) an individual;

(*ii*) a Hindu Undivided Family;

(*iii*) a company;

(*iv*) a trust;

(*v*) a partnership firm;

(*vi*) a limited liability partnership;

(*vii*) an association of persons;

(*viii*) a co-operative society registered under any law for the time being in force relating to co-operative societies; or

(*ix*) every artificial juridical person, not falling within any of the preceding sub-clauses;

(*11*) "prescribed" means prescribed by the rules made by the Central Government or, as the case may be, the State Government under this Act;

(*12*) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

(*13*) "public financial institution" shall have the same meaning as assigned to it in clause (*72*) of section 2 of the Companies Act, 2013; 18 of 2013.

(*14*) "Regulated Deposit Scheme" means the Schemes specified under column (3) of the First Schedule;

(*15*) "Regulator" means the Regulator specified in column (2) of the First Schedule;

(*16*) "Schedule" means the Schedule appended to this Act;

(*17*) "Unregulated Deposit Scheme" means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule.

CHAPTER II

BANNING OF UNREGULATED DEPOSIT SCHEMES

Banning of Unregulated Deposit Schemes.

3. On and from the date of commencement of this Act,—

(*a*) the Unregulated Deposit Schemes shall be banned; and

(*b*) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

Fraudulent default in Regulated Deposit Schemes.

4. No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

Wrongful inducement in relation to Unregulated Deposit Schemes.

5. No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

Certain scheme to be Unregulated Deposit Scheme.

43 of 1978.

6. A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Act.

CHAPTER III

AUTHORITIES

Competent Authority.

7. (*1*) The appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

(*2*) The appropriate Government may, by notification, appoint such other officer or officers as it thinks fit, to assist the Competent Authority in discharging its functions under this Act.

(*3*) Where the Competent Authority or officers appointed under sub-section (*2*), for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of such information and particulars as may be prescribed, that any deposit taker is soliciting deposits in contravention of section 3, he may, by an order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of the order, in such manner as may be prescribed.

5 of 1908.

(*4*) The Competent Authority shall, for the purposes of sub-section (*3*), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:—

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

(*c*) compelling the production of records;

(*d*) receiving evidence on affidavits;

(*e*) issuing commissions for examination of witnesses and documents; and

(*f*) any other matter which may be prescribed.

(*5*) The Competent Authority shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this section.

(*6*) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(*7*) Every proceeding under sub-sections (*4*) and (*5*) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. 45 of 1860.

(*8*) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (*2*) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that the officer or officers referred to in sub-section (*2*) shall not—

(*a*) impound any records without recording his reasons for so doing; or

(*b*) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Competent Authority.

Designated Court.

8. (*1*) The appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge.

(*2*) No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(*3*) When trying an offence under this Act, the Designated Court may also try an offence, other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 2 of 1974.

CHAPTER IV

INFORMATION ON DEPOSIT TAKERS

Central database.

9. (*1*) The Central Government may designate an authority, whether existing or to be constituted, which shall create, maintain and operate an online database for information on deposit takers operating in India.

(*2*) The authority designated under sub-section (*1*) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

Information of business by deposit taker.

10. (*1*) Every deposit taker which commences or carries on its business as such on or after the commencement of this Act shall intimate the authority referred to in sub-section (*1*) of section 9 about its business in such form and manner and within such time, as may be prescribed.

(*2*) The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant to an Unregulated Deposit Scheme, direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

Explanation.—For the removal of doubts, it is hereby clarified that—

(*a*) the requirement of intimation under sub-section (*1*) is applicable to deposit takers accepting or soliciting deposits as defined in clause (*4*) of section 2; and

(*b*) the requirement of intimation under sub-section (*1*) applies to a company, if the company accepts the deposits under Chapter V of the Companies Act, 2013. 18 of 2013.

Information to be shared.

11. (*1*) The Competent Authority shall share all information received under section 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under section 9.

(*2*) The appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

(*3*) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

CHAPTER V

RESTITUTION TO DEPOSITORS

Priority of depositors' claim.

12. Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority. 54 of 2002. 31 of 2016.

Precedence of attachment.

13. (*1*) Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority. 54 of 2002. 31 of 2016.

(*2*) Where an order of provisional attachment has been passed by the Competent Authority—

(*a*) such attachment shall continue until an order is passed under sub-section (*3*) or sub-section (*5*) of section 15 by the Designated Court;

(*b*) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(*3*) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

(*4*) The Competent Authority shall not dispose of or alienate the property or money attached, except in accordance with the order of the Designated Court under sub-section (*3*) or sub-section (*5*) of section 15.

(*5*) Notwithstanding anything contained in sub-section (*4*), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

Application for confirmation of attachment and sale of property.

14. (*1*) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

(*2*) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

Confirmation of attachment by Designated Court.

15. (*1*) Upon receipt of an application under section 14, the Designated Court shall issue notice to—

(*a*) the deposit taker; and

(*b*) any person whose property is attached under section 14,

to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.

(*2*) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (*1*) to raise objections, if they so desire, to the attachment of the property.

(*3*) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order—

(*a*) making the provisional order of attachment absolute; or

(*b*) varying it by releasing a portion of the property from attachment; or

(*c*) cancelling the provisional order of attachment,

and in case of an order under clause (*a*) or clause (*b*), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

(*4*) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—

(*a*) the deposit taker or the person referred to in sub-section (*1*) has interest in such property; and

(*b*) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(*5*) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

(*6*) The Designated Court shall endeavour to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (*1*).

Attachment of property of *mala fide* transferees.

16. (*1*) Where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit

taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(*2*) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a *bona fide* transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

Payment in lieu of attachment.

17. (*1*) Any deposit taker or a person referred to in sub-section (*1*) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

(*2*) While allowing the deposit taker or person or transferee referred to in sub-section (*1*) to make the deposit under sub-section (*1*), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

Powers of Designated Court.

18. (*1*) The Designated Court shall exercise the following powers, namely:—

(*a*) power to approve the statement of dues of the deposit taker due from various debtors;

(*b*) power to assess the value of the assets of the deposit taker and finalise the list of the depositors and their respective dues;

(*c*) power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account;

(*d*) power to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker;

(*e*) power to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment to the depositors in the event, the money so realised is not sufficient to meet the entire deposit liability;

(*f*) power to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention; and

(*g*) power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto.

(*2*) On the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving such Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for—

(*a*) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant a of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been initiated against him in the Designated Court under this Act; or

(*b*) safeguarding, so far as may be practicable, the interest of any business affected by the attachment.

Explanation.—For the purposes of this section, the expression "deposit taker" includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Act.

Appeal to High Court.

19. Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of sixty days from the date of such order:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—The expression "High Court" means the High Court of a State or Union territory where the Designated Court is situated.

Power of Supreme Court to transfer cases.

20. (*1*) Whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in section 30, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court.

(*2*) The Supreme Court may act under this section only on an application filed by the Competent Authority or any interested party, and every such application shall be supported by an affidavit.

(*3*) Where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

CHAPTER VI

OFFENCES AND PUNISHMENTS

Punishment for contravention of section 3.

21. (*1*) Any deposit taker who solicits deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.

(*2*) Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.

(*3*) Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in the Unregulated Deposit Scheme.

Explanation.—For the purposes of this Act,—

(*i*) the expression "fraudulently" shall have the same meaning as assigned to it in section 25 of the Indian Penal Code; 45 of 1860.

(*ii*) where the terms of the Deposit Scheme are entirely impracticable or unviable, the terms shall be relevant facts showing an intention to defraud.

Punishment for contravention of section 4.

22. Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.

Punishment for contravention of section 5.

23. Any person who contravenes the provisions of section 5 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which may extend to ten lakh rupees.

Punishment for repeat offenders.

24. Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees.

Offences by deposit takers other than individuals.

25. (*1*) Where an offence under this Act has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*2*) Nothing contained in sub-section (*1*) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*3*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a deposit taker other than an individual, and it is proved that the offence—

(*a*) has been committed with the consent or connivance of; or

(*b*) is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker,

such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Punishment for contravention of section 10.

26. Whoever fails to give the intimation required under sub-section (*1*) of section 10 or fails to furnish any such statements, information or particulars as required under sub-section (*2*) of that section, shall be punishable with fine which may extend to five lakh rupees.

Cognizance of offences.

27. Notwithstanding anything contained in section 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator:

Provided that the provisions of section 4 and this section shall not apply in relation to a deposit taker which is a company.

CHAPTER VII

INVESTIGATION, SEARCH AND SEIZURE

Offences to be cognizable and non-bailable.

2 of 1974.

28. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under section 22 and section 26, shall be cognizable and non-bailable.

Competent Authority to be informed of offences.

29. The police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

Investigation of offences by Central Bureau of Investigation.

30. (*1*) On receipt of information under section 29 or otherwise, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which—

(*a*) the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and

(*b*) the total value of the amount involved is of such magnitude as to significantly affect the public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

(*2*) The reference made by the Competent Authority under sub-section (*1*) shall be deemed to be with the consent of the State Government under section 6 of the Delhi Special Police Establishment Act, 1946. 25 of 1946.

(*3*) On the receipt of the reference under sub-section (*1*), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under section 5 of the Delhi Special Police Establishment Act, 1946. 25 of 1946.

Power to enter, search and seize without warrant.

31. (*1*) Whenever any police officer, not below the rank of an officer in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Act may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer subordinate to him,—

(*a*) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act;

(*b*) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (*a*);

(*c*) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit taking scheme or arrangement in contravention of the provisions of this Act; and

(*d*) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, without the said written authorisation, enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.

(*2*) Where it is not practicable to seize the record or property, the officer authorised under sub-section (*1*), may make an order in writing to freeze such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act and it shall be binding on the concerned bank or financial or market establishment to comply with the said order:

Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond thirty days unless the same is authorised by the order of the Designated Court:

Provided further that, if at any time, it becomes practicable to seize the frozen property, the officer authorised under sub-section (*1*) may seize such property.

Explanation.—For the purposes of this section, the expressions,—

(*i*) "freezing of account" shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account; and

(*ii*) "freezing of property" shall mean that no transfer, conversion, disposition or movement of property shall be allowed.

(*3*) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-section (*1*) or sub-section (*2*), he shall, within a time of seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owner or occupier of the building, conveyance or place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.

(*4*) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

Application of Code of Criminal Procedure, 1973 to proceedings before Designated Court.

32. (*1*) The Designated Court may take cognizance of offences under this Act without the accused being committed to it for trial.

(*2*) Save as otherwise provided in section 31, the provisions of the Code of Criminal Procedure, 1973 shall apply—

2 of 1974.

(*a*) to all arrests, searches and seizures made under this Act;

(*b*) to the proceedings under this Act and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors.

CHAPTER VIII

MISCELLANEOUS

Publication of advertisement of Unregulated Deposit Scheme.

33. Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

Act to have overriding effect.

34. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

Application of other laws not barred.

35. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Power of Central Government to make rules.

37. (*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (*3*) of section 7;

(*b*) the information to be shared under sub-section (*2*) of section 9;

(*c*) the form and manner in which and the time within which the intimation shall be given under sub-section (*1*) of section 10;

(*d*) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (*1*) of section 14;

(*e*) the procedure to be adopted by the Designated Court before issuing an order under sub-section (*3*) of section 15;

(*f*) rules under sub-section (*1*) of section 31;

(*g*) the manner of publication of advertisement under section 33; and

(*h*) any other matter which is required to be, or may be, prescribed. Ord. 7 of 2019.

Power of State Government, etc., to make rules.

38. (*1*) The State Government or Union territory Government, as the case may be, in consultation with the Central Government, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) ceiling for self-help groups under clause (*j*) of sub-section (*4*) of section 2;

(*b*) purpose and ceiling under clause (*k*) of sub-section (*4*) of section 2;

(*c*) the manner of provisional attachment of property by the Competent Authority under sub-section (*3*) of section 7;

(*d*) other matters under clause (*f*) of sub-section (*4*) of section 7;

(*e*) the rules relating to impounding and custody of records under sub-section (*8*) of section 7; and

(*f*) any other matter which is required to be, or may be, prescribed.

Laying of rules.

39. (*1*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(*2*) Every rule made by a State Government or the Union territory Government, as the case may be, shall be laid, as soon as may be after it is made, before each House of the State Legislature or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to amend First Schedule.

40. (*1*) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification, add to, or as the case may be, omit from the First Schedule, any scheme or arrangement, and on such addition, or omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be.

(*2*) A copy of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Act not to apply certain deposits.

41. The provisions of this Act shall not apply to deposits taken in the ordinary course of business.

Amendment to certain enactments.

42. The enactments specified in the Second Schedule shall be amended in the manner specified therein.

Power to remove difficulties.

43. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Ord. 7 of 2019.

Repeal and saving.

44. (*1*) The Banning of Unregulated Deposit Schemes Ordinance, 2019, is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

THE FIRST SCHEDULE

[*See* section 2 (*15*)]

REGULATED DEPOSIT SCHEMES

(*1*) The Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the following Table, namely:—

TABLE

Sl. No.	Regulator	Regulated Deposit Scheme
(1)	(2)	(3)
1.	The Securities and Exchange Board of India	(*i*) Any scheme or an arrangement [as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (15 of 1992)] launched, sponsored or carried out by a Collective Investment Management Company registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999. (*ii*) Any scheme or an arrangement registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012. (*iii*) Any scheme or an arrangement, pursuant to which funds are managed by a portfolio manager, registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993. (*iv*) Any scheme or an arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013 (18 of 2013). (*v*) Any other scheme or an arrangement registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the regulations made thereunder. (*vi*) Any amount received as contributions in the nature of subscriptions to a mutual fund registered with Securities and Exchange Board of India under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.
2.	The Reserve Bank of India	(*i*) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.

(1)	(2)	(3)
		(*ii*) Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the guidelines and circulars issued by the Reserve Bank of India from time to time. (*iii*) Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007). (*iv*) Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India.
3.	The Insurance Regulatory and Development Authority of India	A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938 (4 of 1938).
4.	The State Government or Union territory Government	(*i*) Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory. (*ii*) Any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982). (*iii*) Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory. (*iv*) Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978).
5.	The National Housing Bank	Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987 (53 of 1987).
6.	The Pension Fund Regulatory and Development Authority	Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
7.	The Employees' Provident Fund Organisation	Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952).
8.	The Central Registrar, Multi-State Co-operative Societies	Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002).

(1)	(2)	(3)
9.	The Ministry of Corporate Affairs, Government of India	(*i*) Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013).
		(*ii*) Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013 (18 of 2013).

(*2*) The following shall also be treated as Regulated Deposit Schemes under this Act, namely:—

(*a*) deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(*b*) any other scheme as may be notified by the Central Government under this Act.

THE SECOND SCHEDULE

(*See* section 42)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

In the Reserve Bank of India Act, 1934, in section 45-I, in clause (*bb*), after *Explanation* II, the following *Explanation* shall be inserted, namely:— Amendment of section 45-I of Act 2 of 1934.

"*Explanation* III.—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.".

PART II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In the Securities and Exchange Board of India Act, 1992,— Amendment of section 11 of Act 15 of 1992.

(*i*) in section 11, in sub-section (*4*), for clause (*e*), the following clause shall be substituted, namely:—

"(*e*) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.";

(*ii*) in section 28A, after *Explanation* 3, the following *Explanation* shall be inserted, namely:—

"*Explanation* 4.—The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.". 43 of 1961.

PART III

AMENDMENT TO THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

In the Multi-State Co-operative Societies Act, 2002, in section 67, in sub-section (*1*),— Amendment of section 67 of Act 39 of 2002.

(*a*) after the words "receive deposits", the words "from its voting members" shall be inserted;

(*b*) the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the removal of doubts, it is hereby clarified that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.".